

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

MARTIN J. WALSH, Secretary of Labor,)	
United States Department of Labor,)	
)	
Plaintiff,)	
)	Civil Action No. 6:22-cv-3287
v.)	
)	
PHOENIX HOME CARE, LLC,)	
)	
Defendant.)	
)	

COMPLAINT

Pursuant to Section 217 of the Fair Labor Standards Act, of 1938, as amended (29 U.S.C. § 201 *et seq.*) (“FLSA”), Plaintiff Martin J. Walsh, Secretary of Labor, United States Department of Labor (“Secretary”), brings this action to enjoin and restrain Defendant Phoenix Home Care, LLC, from violating section 207, 211, 215(a)(2) and 215(a)(5) of the FLSA, and to recover wages that Defendant failed to pay its employees, as well as liquidated damages, pursuant to the provisions of the FLSA, 29 U.S.C. §§ 215(a)(2), 215(a)(5), 216(c), and 217.

The Secretary, through the Wage and Hour Division, conducted an investigation of two of Defendant’s locations for compliance with the FLSA. The Secretary’s investigation reviewed Defendant’s employment and pay practices from December 31, 2018 through December 27, 2020, at the Branson, Missouri location; and from March 23, 2019 through March 19, 2021, at the Jefferson City, Missouri location (the “Investigation Periods”). Unless stated otherwise, all allegations and conditions described herein pertain to the Investigation Periods.

Jurisdiction and Venue

1. This Court has jurisdiction of this case. 29 U.S.C. §§ 216(c), 217 and 28 U.S.C. § 1345.

2. This Court is the proper venue because all or a substantial part of the events or omissions giving rise to these allegations occurred in this judicial district.

Defendant

3. Defendant Phoenix Home Care, LLC, is a limited liability company within this Court's jurisdiction with its headquarters at 1839 E. Independence Street, Suite K, Springfield, Missouri 65804, where it conducts business.

4. Defendant Phoenix Home Care, LLC, is a home healthcare agency with locations throughout Missouri, Kansas, and Illinois.

5. During the Investigation Periods, Defendant Phoenix Home Care, LLC, engaged in business within Greene County and Cole County, within this Court's jurisdiction.

The FLSA Applies to Defendants

6. Phoenix Home Care, LLC, is an "enterprise" under the FLSA due to its related activities performed through unified operation or common control and for a common business purpose. 29 U.S.C. § 203(r).

7. Phoenix Home Care, LLC, is an "enterprise engaged in commerce" under the FLSA, because it had (i) two or more employees who are engaged in or produced goods for commerce; and (ii) an annual gross volume of sales or business done greater than \$500,000 during the Investigation Periods. 29 U.S.C. § 203(s)(1)(A).

8. Additionally, Phoenix Home Care, LLC, is, and at all times hereinafter mentioned was, employing employees in and about its places of business in domestic service employment,

within the meaning of section 2(a) of the Act. Section 2(a) states in pertinent part, “Congress . . . finds that the employment of persons in domestic service in households affects commerce.” 29 U.S.C. § 202(a). Employees of Phoenix Home Care, LLC, provide in-home care for elderly people and people with disabilities. This work qualifies as domestic service work and, accordingly, the employees at issue were engaged in commerce.

FLSA Violations

9. Phoenix Home Care, LLC, repeatedly violated sections 207 and 215(a)(2) of the FLSA when it failed to pay its employees one-and-one-half times their regular rates for hours worked in excess of 40 in a workweek. Phoenix Home Care, LLC, failed to pay certain employees overtime wages when it failed to pay for time spent traveling between clients, which was part of their principal activity, as required by 29 C.F.R. § 785.38. 29 U.S.C. §§ 207(a)(1), 215(a)(2).

10. Phoenix Home Care, LLC, violated sections 211 and 215(a)(5) of the FLSA when it failed to keep complete and accurate records. 29 U.S.C. §§ 211, 215(a)(5), 29 C.F.R. Part 516.

Remedies Sought

11. As a result of their FLSA violations, Phoenix Home Care, LLC, owes the employees listed in Exhibit A unpaid back wages and liquidated damages under 29 U.S.C. §§ 216(c), 217.

12. Moreover, Phoenix Home Care, LLC, repeatedly and willfully violated sections 207, 211, 215(a)(2), and 215(a)(5) of the FLSA, because Defendant previously violated the FLSA and knew or showed reckless disregard for whether the FLSA prohibited its conduct.

13. Specifically, Phoenix Home Care, LLC, acted willfully when it had notice about the FLSA’s requirement to pay for travel time by virtue of an investigation of the same

establishment with the same owners in 2018 finding the same or similar violations as the investigations subject to this Complaint; it agreed to pay any unpaid overtime wages owed as a result of that earlier violation; and it assured the Secretary that it would comply with the FLSA in the future.

14. Further, Phoenix Home Care, LLC's acts were repeated because the employer previously violated section 207, in which the employer received notice through an official of the Wage and Hour Division that it was in violation of the FLSA.

15. Because Phoenix Home Care, LLC, repeatedly and willfully violated the FLSA, the Secretary is entitled to recover back wages and liquidated damages for a three-year period. 29 U.S.C. § 255(a).

Prayer for Relief

As a result of Phoenix Home Care, LLC's repeated and willful FLSA violations, the Secretary respectfully requests this Court enter an Order:

A. Permanently enjoining and restraining Defendant Phoenix Home Care, LLC, its officers, agents, servants, employees, and those in active concert or participation with them, from violating sections 207, 211, 215(a)(2) and 215(a)(5) of the FLSA. 29 U.S.C. § 217(a).

B. Finding Defendant Phoenix Home Care, LLC, liable for unpaid overtime wages, plus an equal amount in liquidated damages, owing to the employees listed in Exhibit A. 29 U.S.C. § 216(c).

C. If the Court declines to award liquidated damages, then enjoining and restraining Defendant Phoenix Home Care, LLC, its officers, agents, employees, and those persons in active concert or participation with Defendant, from withholding unpaid compensation

found owing to Defendant's employees, plus prejudgment interest computed at the underpayment rate established by the Secretary of the Treasury under 26 U.S.C. § 6621.

D. Providing such other relief as may be necessary and appropriate.

Seema Nanda
Solicitor of Labor

Christine Z. Heri
Regional Solicitor

Evert H. Van Wijk
Associate Regional Solicitor

/s/ Traci Martin
Trial Attorney
MO Bar #59796

2300 Main Street, Suite 10100
Kansas City, MO 64108
(816) 285-7272
(816) 285-7287 (fax)
martin.traci.e@dol.gov

U.S. Department of Labor
Attorneys for Plaintiff Secretary of Labor

EXHIBIT A

- | | | |
|------------------------------|------------------------------|----------------------------|
| 1. Aguilar, Linda | 46. Hayes, Cierra | 91. Pinnell, Akisha |
| 2. Anderson, Carlena | 47. Heath, Melissa | 92. Platt, Marie |
| 3. Anderson, Linda | 48. Hensley-Parker, Arianna | 93. Richards, Harliann |
| 4. Andrews, Sharon | 49. Hertzling, Brooke | 94. Riley Jones, Lorabeth |
| 5. Atkinson, Ashley | 50. Hilgenfeld, Amber | 95. Roberts, Jamie |
| 6. Baker, Lila | 51. Hill, Deina | 96. Robertson, Kaley |
| 7. Bandy, Jacqueline | 52. Hinkley-Will, Julie | 97. Robinett, Tiffany |
| 8. Bartlett, Tasha | 53. Hinsberger, Brezzie | 98. Robinson, Natalie |
| 9. Belden, Christy | 54. Hitz, Lisa | 99. Russell, Natalie |
| 10. Beveridge, Carmella | 55. Howard, Jenna | 100. Saunders, Darlene |
| 11. Bigham, Shantaria | 56. Hutchinson, Anna | 101. Schubert, Kaytlin |
| 12. Blackwell, Briana | 57. Hutchinson, Billie | 102. Schultz, Julie |
| 13. Boersma, Madison | 58. Jackson, Carol | 103. Scott, Christina |
| 14. Borts, Stefanie | 59. Jennings, Kaitlyn | 104. Shetley, Megin |
| 15. Boswell, Janett | 60. Johnson, Casey | 105. Shoulders, Kiara |
| 16. Boyd, Chloe | 61. Johnson, Christina | 106. Sjostrand, Brooke |
| 17. Brooks, Shelby | 62. Jones, Barbara | 107. Smith, Sheila |
| 18. Bryant, Stephen | 63. Jones, Kieran | 108. Smith, Sherry |
| 19. Capestro, Torey | 64. Jordan, Michelle | 109. Snyder, Kelsey |
| 20. Carpenter, Daniel | 65. Kabatra, Michael | 110. Stanley, Tammy |
| 21. Choate, Christa | 66. Kellerman, Chassiney | 111. Stone, Chrstina |
| 22. Cisneros, Kelsey | 67. Kempker, Sandra | 112. Stuckenberg, Siobhan |
| 23. Cook, Misty | 68. Kramek, Savannah | 113. Sullivan, Ashley |
| 24. Cramer, Brenda | 69. Kroeker, Charish | 114. Summers, Lisa |
| 25. Cris-Kargbo, Betty | 70. Kuklok, Lucinda | 115. Taylor, Brittany |
| 26. Dalglish, Laura | 71. Ledbetter, Davvee | 116. Thebeau, Theresa |
| 27. Davis, Sarah | 72. Lemaster, Megan | 117. Tilton, Kimberly |
| 28. Dennis, Terry | 73. Lewis, Robin | 118. Tomson, Allison |
| 29. Dobson, Aubrey | 74. Lilly, Donna | 119. Tranchilla, Margaret |
| 30. Douglas, Rebecca | 75. Loggins, Amanda | 120. True, JoAnna |
| 31. Earnheart, Jamie | 76. Lucero, Annette | 121. Tunstall, Antwan |
| 32. Edwards, Kimberly | 77. Maddy, Megan | 122. Usrey, Brandi |
| 33. Elliott, Gabriella | 78. Mahoney, Barbara | 123. Verecke, Sarah |
| 34. Eschliman, Paula | 79. Marsa, Carmen | 124. Vocks, Linda |
| 35. Flores, Alicia | 80. McCurry, Shelly | 125. Vos, Skylar |
| 36. Francis, Paris | 81. Meyer, Hannah | 126. Wagner, Dennis |
| 37. Frost, Adriana | 82. Mitchell, Gabrielle | 127. Washington, Stephanie |
| 38. Fuller, Beth | 83. Morff, Gabrielle | 128. Waters, Rylee |
| 39. Gallegos, Chantille | 84. Muzy, Julie | 129. Weimer, Kimberly |
| 40. Garcia, Virginia | 85. Norris, Samantha | 130. Willis, Cassidy |
| 41. Griswold, Melissa | 86. Overstreet, Andrew | 131. Willis, Melanie |
| 42. Grohs, Alicia | 87. Parker, Kendra | 132. Witte, Tina |
| 43. Gump, Kerry | 88. Parkes-Wagner, Cassandra | 133. Wood, Diane |
| 44. Hagenhoff, Danielle | 89. Patrick, Mialissia | |
| 45. Hall-Singleton, Cinnamon | 90. Pearson, Jessica | |